

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROBERT S. GARNER a/k/a SCOTT
GARNER, *individually and on behalf of*
all others similarly situated

Plaintiff,

v.

AXIP ENERGY SERVICES, LP,

Defendant.

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Civil Action No. 4:24-cv-3300

**DEFENDANT AXIP ENERGY SERVICES, LP'S
MOTION TO DISMISS CLASS ACTION COMPLAINT**

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Axip Energy Services, LP (“Axip”), by and through undersigned counsel, respectfully requests that the Court dismiss Plaintiff’s First Amended Class Action Complaint (“Amended Complaint”) in its entirety.

In support of this motion, Axip states as follows:

1. Because Plaintiff has not alleged, and cannot prove, plausible, concrete, and imminent harm from the data security incident alleged in the Complaint, the Court should dismiss the Amended Complaint under Rule 12(b)(1).

2. Because the Amended Complaint fails to state a claim upon which relief may be granted for any of its six causes of action brought, the Court should dismiss the Amended Complaint under Rule 12(b)(6).

3. Axip is contemporaneously filing a supporting brief that provides further legal analysis and support for this motion, as required by Hon. Judge Andrew S. Hanen Civil Procedures 7.I.

WHEREFORE, Axip, by counsel, respectfully request that this Court dismiss Plaintiff's First Amended Class Action Complaint in its entirety.

DATED: October 29, 2024

Respectfully submitted,

By: /s/ Peter L. Loh
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Ana Sofia Batista (TX 24137543)
Joe Swanson (*pro hac vice forthcoming*)
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**ATTORNEYS FOR AXIP ENERGY
SERVICES, LP**

CERTIFICATE OF CONFERENCE

I hereby certify that on October 15, 2024, Counsel for Axip conferred with Philip Krzeski, counsel for Plaintiff, via telephone, regarding the issues and arguments asserted in the foregoing document but the parties were unable to reach an agreement on whether the pleading deficiency could be cured.

/s/ Peter L. Loh
Peter L. Loh

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been duly served upon all known counsel of record in accordance with the Federal Rules of Civil Procedure on October 29, 2024.

/s/ Peter L. Loh
Peter L. Loh